

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

| | | |
|----------------------|---|---------------------------------|
| In re: |) | Case No. 10-50494 |
| |) | |
| FAIR FINANCE COMPANY |) | Chapter 7 |
| |) | |
| Debtor. |) | Chief Judge Marilyn Shea-Stonum |
| |) | |

**APPLICATION FOR ORDER AUTHORIZING THE EMPLOYMENT AND
RETENTION OF HOWARD L. KLEIN CO. AS FORENSIC ACCOUNTANT TO THE
TRUSTEE *NUNC PRO TUNC* TO FEBRUARY 22, 2010**

Brian A. Bash (“**Trustee**”), hereby moves the Court for entry of an order pursuant to sections 327(a), 328(a) and 1103 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2014, 2016 and 5002 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the employment and retention, *nunc pro tunc* to February 22, 2010, of Howard L. Klein Co. as forensic accountant for the Trustee. In support of this Application, the Trustee respectfully states as follows:

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 327(a), 328 and 1103 of the Bankruptcy Code.

2. On February 8, 2010 (the “**Petition Date**”), creditor-investors filed a petition for involuntary bankruptcy against the debtor in this case, Fair Finance Company (the “**Debtor**”).

3. On the Petition Date, the creditor-investors also filed an “Emergency Motion to Appoint Interim Trustee” (Docket No. 2) alleging that a trustee was needed to oversee the operations of the Debtor because (i) the Debtor had failed to make timely payments on its debts,

including failing to redeem matured certificates and failing to pay interest on unmatured certificates; (ii) the Debtor and several affiliated companies had been raided by the Federal Bureau of Investigation in November of 2009; (iii) the Debtor has not been open to the public since the raid; and (iv) public records revealed that the Debtor had made “unusually large” loans to insiders.

4. On February 19, 2010, this Court entered an order directing the United States Trustee to appoint an interim trustee. Attorney Bash is the duly appointed, qualified and acting interim trustee in the within proceedings.

5. On February 24, 2010, the Debtor filed notice that it consents to the entry of an order for relief in this proceeding (Docket No. 35).

6. As part of his duty to administer and liquidate the estate for the benefit of creditors, the Trustee requires the assistance of a qualified forensic accountant to assist the Trustee in locating assets which rightfully belong to or are recoverable by the estate.

7. It is also necessary that the trustee employ a forensic accountant to do the following:

- a) Assist the Trustee in determining the assets and liabilities of the Debtor and identifying causes of action and other assets of the Debtor;
- b) Assist the Trustee in recovering assets for the estate;
- c) Assist the Trustee in determining the identities and locations of the creditors; and
- d) Perform any other accounting or tax services the Trustee requires to administer the estate for the best interest of the creditors.

8. The Trustee requests the appointment of Howard L. Klein Co. (“**HLK**”) as a forensic accountant because it is experienced, qualified, and, in the trustee’s experience, efficient. Mr. Howard L. Klein, the principal of HLK, is a Certified Public Accountant, a Certified Fraud Examiner, and a Certified Insolvency and Restructuring Advisor, and has

extensive experience in investigative accounting and reviewing the records of bankruptcy debtors. The Court's authorization to employ HLK to act as accountant is in the best interest of the estate and of the creditors, as HLK is experienced and qualified to render the professional accounting services needed by the Trustee.

9. HLK maintains offices at 25550 Chagrin Blvd., Suite 204, Beachwood, Ohio 44122.

10. The Trustee proposes that HLK be compensated for services rendered on an hourly rate, and for expenses incurred in connection with this Chapter 7 proceeding. The current standard billing rate of HLK for the services of Howard L. Klein is \$250.00 per hour. It is the practice of Howard L. Klein Co. to utilize other personnel at lower rates when it would be in the best interest of the estate to do so based on cost and efficiency. All fees and expenses will be subject to Court approval upon proper application and will be paid only upon Court order.

11. The hourly rate to be charged shall be the same as that charged in the ordinary course of business. These hourly rates normally are subject to review and revision each year.

12. As more fully set forth in the Affidavit of Howard L. Klein, attached hereto as **Exhibit A**, Howard L. Klein and HLK are disinterested within the meaning of 11 U.S.C. § 101(14). Neither Howard L. Klein nor anyone associated with him in the practice of accounting has any connection with the Debtor. Neither is a creditor, equity security holder, insider, director, officer, or employee of the Debtor, nor has either been a director, officer or employee of the Debtor in the two years preceding the bankruptcy petition. Further, neither has any connections, direct or indirect, with the Trustee, the U.S. Trustee or employees, creditors, or any other parties in interest or the representatives, attorneys or accountants thereof and does not represent or hold an interest that is adverse to the estate or any class of creditors or equity security holders.

13. Further, neither Howard Klein nor any person with whom he is associated in the practice of accounting is a relative by blood or marriage of any Bankruptcy Judge of the Northern District of Ohio or the United States Trustee for Region 9, and he is not now nor has he ever been so connected with any such Judge or the United States Trustee for Region 9 so as to render his appointment or the Court's approval of such employment as a forensic accountant in the above-captioned matter improper.

WHEREFORE, the Trustee respectfully requests that the Court enter an Order, substantially in the form attached hereto as **Exhibit B**, authorizing the Committee to employ and retain HLK as forensic accountant for the Trustee, nunc pro tunc to February 22, 2010, and grant such further relief as is just and proper.

Date: February 25, 2010

Respectfully submitted,

/s/ Brian A. Bash

Brian A. Bash, Trustee (0000134)
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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Re:) Case No. 10-50494
)
Fair Finance Company) Judge Marilyn Shea-Stonum
)
) **AFFIDAVIT AND VERIFIED**
) **STATEMENT**
Debtor.) **PURSUANT TO RULES 5002 AND 2014 OF**
) **THE BANKRUPTCY RULES**
)

The undersigned being first duly sworn and according to law, deposes and says that:

1. He makes this Verified Statement pursuant to the provisions of 11 U.S.C. Sections 327(a) and (c) of the Bankruptcy Code regarding employment of professional persons by the Trustee, and in light of the restrictions and requirements imposed thereon by Bankruptcy Rules 2014(a) and 5002.

2. Howard L. Klein Co. has not received a retainer.

3. This Verified Statement is to affirm to this Court that neither Affiant nor any person with whom he is associated in the practice of accounting is a relative by blood or marriage of any Bankruptcy Judge of the Northern District of Ohio or the United States Trustee for Region 9, and that he is not now nor has he ever been so connected with any such Judge or the United States Trustee for Region 9 as to render his appointment or the Court's approval of such employment as a forensic accountant in the above-captioned matter improper.

4. This Verified Statement is to further affirm to this Court that neither Affiant, nor any person with whom he is associated in the practice of accounting, is connected with the debtor, creditors or any other party in interest or their respective attorneys and accountants.

Howard L. Klein Co. will not represent any creditor or other party in interest (other than the Interim Chapter 7 Trustee) in connection with this case.

5. This Verified Statement is to fully disclose to the Court that to the best of his knowledge he knows of no matters that might be considered by any party to create any issue or claim of conflict or lack of being a disinterested party, as related to him or his firm acting as an accountant in this case and has no connections as relates to the debtor, creditors, or any person in interest, their respective attorneys and accountants and to disclose to the Court that the only fees and expenses to be paid to Applicant shall be those allowed pursuant to order of this Court.

6. This Verified Statement is to further affirm that Howard L. Klein Co. is a “disinterested person” under 11 U.S.C. §101(14).

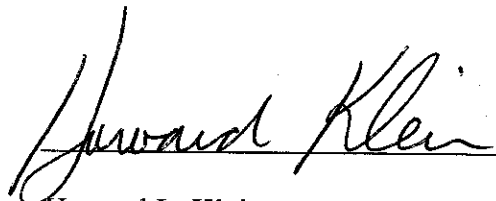
- (a) Howard L. Klein Co. has not represented the Debtor.
- (b) No accountant with Howard L. Klein Co. is a creditor of the Debtor, or an insider of the Debtor, or holds a direct or indirect equity interest in the Debtor, including stock, stock warrants or a partnership interest in a debtor partnership, or has a right to acquire such an interest.
- (c) No accountant with Howard L. Klein Co. is or has served as an officer, director or employee of the Debtor within two years before the filing of the petition.
- (d) No accountant with Howard L. Klein Co. is in control of the Debtor or is a relative of a general partner, director, officer or person in control of the Debtor.
- (e) No accountant with Howard L. Klein Co. is or has served as an officer, director, or employee of a financial advisor which has been engaged by the Debtor in connection with the offer, sale, or issuance of a security of the Debtor within two years before the filing of the petition.

- (f) Neither Howard L. Klein Co. nor any accountant with Howard L. Klein Co. has represented a financial advisor of the Debtor in connection with the offer, sale, or issuance of a security of the Debtor within three years before the filing of the petition.
- (g) Neither Howard L. Klein Co., nor any accountant with Howard L. Klein Co., represents in this bankruptcy case a creditor, a holder of any equity securities of the Debtor, a general partner, a lessor, a lessee, a party to an executory contract of the Debtor, or a person otherwise adverse or potentially adverse to the Debtor or the estate.
- (h) Neither Howard L. Klein Co. nor any accountant with Howard L. Klein Co. represents an insider of the Debtor or the Debtor's parent, subsidiary, or other affiliate.
- (i) Neither Howard L. Klein Co. nor any accountant with Howard L. Klein Co. has been paid fees prepetition or holds a security interest, guaranty or other assurance of compensation for services performed or to be performed in this case.
- (j) There is no agreement of any nature as to the sharing of any compensation to be paid to Howard L. Klein Co.
- (k) Neither Howard L. Klein Co. nor any accountant with Howard L. Klein Co. has any other connection with the Debtor, creditors, the United States Trustee or any employee of that office, or any other party in interest that is materially adverse to the Debtor or the estate.

7. Further, this Verified Statement is to fully disclose to the Court that Howard L. Klein Co. will charge for its expenses and its standard hourly rates for work of this nature. The current standard hourly billing rate of Howard L. Klein Co. for services of Howard L. Klein is \$250.00 per hour. It is the practice of Howard L. Klein Co. to utilize other personnel at lower rates when it would be in the best interest of the estate to do so base on cost and efficiency. All fees and expenses will, of course, be subject to Court approval upon proper application and will be paid only upon Court order.


8. I will abide by Local Rule 2016-1 relating to the Guidelines for Compensation and Expense Reimbursement for Professionals.

9. I verify under penalty of perjury that the foregoing is true and correct.



Howard L. Klein
HOWARD L. KLEIN Co.
25550 Chagrin Blvd.- Suite 204
Beachwood, Ohio 44122
216-831-7300, ext 14

SWORN TO BEFORE ME, and subscribed in my presence, this 25 day of February, 2010.


Notary Public

My commission expires
August 26, 2012
Cuyahoga County Ohio

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

| | | |
|----------------------|---|---------------------------------|
| In re: |) | Case No. 10-50494 |
| |) | |
| FAIR FINANCE COMPANY |) | Chapter 7 |
| |) | |
| Debtor. |) | Chief Judge Marilyn Shea-Stonum |
| |) | |

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF
HOWARD L. KLEIN CO. AS FORENSIC ACCOUNTANT
TO THE TRUSTEE *NUNC PRO TUNC* TO FEBRUARY 22, 2010**

This matter came to be heard upon the application of the Trustee for an order authorizing him to employ Howard L. Klein Co., as a forensic accountant.

Upon consideration thereof, the Court finds the Application well-taken, that the appointment of a forensic accountant to assist the Trustee is in the best interests of the estate; that Howard L. Klein Co. and its principal, Howard L. Klein, are disinterested and are qualified to act as such forensic accountant for the purposes set forth in the application.

IT IS THEREFORE ORDERED that the Trustee's Application for Order Authorizing the Employment and Retention of Howard L. Klein Co. as Forensic Accountant to the Trustee *Nunc Pro Tunc* to February 22, 2010, is hereby granted.

IT IS SO ORDERED.

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Submitted by:

/s/

Brian A. Bash, Trustee (0000134)
Baker & Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, OH 44114-3485
216.861.7581
BashTrustee@Bakerlaw.com

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via ECF or regular, U.S. Mail, on February 25, 2010, on the attached service list.

/s/ Brian A. Bash

Brian A. Bash

SERVICE LIST

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case.

- J Douglas Drushal ddrushal@ccj.com
- Kimberlie L Huff khuff@taftlaw.com, sschmidt@taftlaw.com
- Trish D. Lazich trish.lazich@ohioattorneygeneral.gov, angelique.seals@ohioattorneygeneral.gov
- David Polan Meyer dmeyer@dmlaws.com, docket@dmlaws.com
- Michael J Moran moranecf@yahoo.com
- David A Mucklow davidamucklow@yahoo.com
- United States Trustee
- Wayne County Litigants ddrushal@ccj.com

Manual Notice List

The following is the list of **parties** who are **not** on the list to receive e-mail notice/service for this case (who therefore require manual noticing/service).

F Anthony Paganelli
Taft Stettinius & Hollister LLP
One Indiana Square, Suite 3500
Indianapolis, IN 46204

David Mucklow
1606 E. Turkeyfoot Lake Road
Akron, OH 44312

Michael P. O'Neil
Taft Stettinius & Hollister LLP
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c/o Howard L. Klein
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